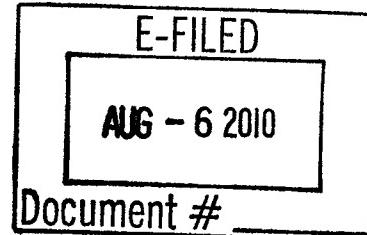


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10  
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13 (a subsidiary of Bank of Scotland)



SU

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

14 CAPITAL BANK PLC. (a subsidiary of  
15 Bank of Scotland),

16 Plaintiff,

17 vs.

18 The M/Y BIRGITTA, Official No.  
19 910659, her engines, tackle and apparel,  
20 etc., *in rem*; JUANITA GROUP  
21 LIMITED, *in personam*,

Defendants.

Case No.: CV-08-5893 PSG (SSx)

**IN ADMIRALTY**

**[PROPOSED] FINAL JUDGMENT**

**FRCP 58**

Pursuant to the Order Granting Plaintiff CAPITAL BANK PLC.'s ("Capital Bank") Motion for Summary Judgment Against Cover Drive, Inc. (Dkt. #196), the Order Granting Plaintiff's Motion for Summary Judgment Against M/Y Birgitta (Dkt. #201), and the Order Granting Request for Default Against All Parties Who Have Not Filed Claims in this Action (Dkt. #204), entered in this action with respect to Plaintiff's Verified First Amended Complaint *In Rem* and *In Personam* (Dkt. #23):

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1 IT IS ORDERED AND ADJUDGED that:

2 1. Plaintiff Capital Bank holds a valid and enforceable first preferred Marine  
3 Mortgage dated July 6, 2005, and a valid and enforceable Statutory Mortgage of a Ship  
4 dated June 28, 2005 (collectively referred to herein as "Marine Mortgage"), which  
5 constitutes a lien against the vessel Motor Yacht BIRGITTA, Official Number 910659,  
6 British Registry, her engines, tackle, apparel, furniture, gear, and all other appurtenances  
7 and necessaries thereto appertaining and belonging (the "Vessel"), *in rem*, and its  
8 registered owner, Defendant and Specially Appearing Claimant JUANITA GROUP  
9 LIMITED (hereinafter referred to as "Juanita Group").

10 2. Other than Juanita Group and Specially Appearing Claimant COVER  
11 DRIVE INC. (hereinafter "Cover Drive"), no other party has appeared or made claim to  
12 the Vessel. As the Court by way of its August 4, 2010 Order (Dkt. #204) has entered  
13 default with respect to Plaintiff's Verified First Amended Complaint *In Rem* and *In*  
14 *Personam* (Dkt. #23) against all persons or entities, other than Juanita and Cover Drive,  
15 who have failed to file a claim and Answer in this action as required by the Court, the  
16 Court now hereby enters judgment with respect to Plaintiff's Verified First Amended  
17 Complaint *In Rem* and *In Personam* (Dkt. #23) against all persons or entities, other than  
18 Juanita and Cover Drive, who have failed to file a claim and Answer in this action as  
19 required by the Court. All such claims by persons or entities who have failed to file a  
20 claim are barred and the Court hereby dismisses those claims with prejudice.

21 3. Capital Bank's Marine Mortgage satisfies all of the requirements of the  
22 Ship Mortgage Act, 46 U.S.C. § 911 *et seq.*, amended and recodified as the Maritime  
23 Commercial Instruments and Liens Vessel Identification System Act of 1988, 46 U.S.C.  
24 § 31321 *et seq.* (hereinafter referred to as the "Ship Mortgage Act"), necessary for the  
25 mortgage to constitute a "preferred mortgage lien" on the Vessel within the meaning of  
26 the Ship Mortgage Act, and as such Capital Bank is entitled to the benefits and priority  
27 provided for therein.

28 4. Capital Bank's Marine Mortgage is senior, prior, superior, and has priority

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1 over all other interests, liens, or claims of whatsoever nature in the Vessel, including  
2 Cover Drive's claim of right to and/or interest in the Vessel (Dkt. #87).

3       5. The Marine Mortgage secures certain indebtedness of Juanita Group to  
4 Capital Bank, evidenced by the Marine Loan Agreement dated June 28, 2005  
5 (hereinafter referred to as "Marine Loan Agreement"), executed and delivered by Juanita  
6 Group in favor of Plaintiff Capital Bank.

7       6. Juanita Group breached the Marine Loan Agreement and the Marine  
8 Mortgage by failing to make principal and interest payments when due following the  
9 arrest of the Vessel by Capital Bank in May 2006 and in allowing a change of ownership  
10 or control of Juanita Group in July 2007, each of which failures constituted an "event of  
11 default" under the terms of the Marine Loan Agreement and the Marine Mortgage.

12       7. By way of its Order Granting Plaintiff's Motion for Summary Judgment  
13 Against M/Y Birgitta (Dkt. #201), the Court adjudicated that on July 6, 2005 the Bank  
14 funded the loan to Juanita Group in the amount of \$6,000,000.00, and that Juanita Group  
15 made ten (10) monthly payments of \$62,908.56 on the loan from October 6, 2005 to  
16 April 28, 2006. Based on said Order, the Marine Mortgage is foreclosed and judgment is  
17 hereby entered in favor of Capital Bank against the vessel M/Y BIRGITTA *in rem* in the  
18 amount of \$5,730,913.40 as follows:

19           a. Principal on Note.....	\$6,000,000.00
20           b. Less 10 payments of \$62,908.56 made by	
21                   Juanita Group.....	<i>5</i> <i>37</i> -\$629,08 <i>6</i> . <i>60</i>
22           TOTAL OF ABOVE.....	<i>37</i> \$5, <i>730,913.40</i>

23       8. Plaintiff Capital Bank has incurred, and will continue to incur interest  
24 and/or late charges on the principal amount of the loan. In addition, Capital Bank has  
25 incurred, and will continue to incur attorney's fees and costs in the collection of the  
26 amounts due under the Marine Loan Agreement and Marine Mortgage, which fees and  
27 costs are expressly recoverable under the Marine Loan Agreement (clause 12.1) and  
28 Marine Mortgage (clause 14(g)) and/or pursuant to the application of English law.

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1 Plaintiff has also incurred, and will continue to incur expenses relating to the foreclosure  
 2 action, including insurance expenses, substitute custodian fees (*custodia legis* expenses),  
 3 repairs and maintenance expenses, U.S. Marshal's fees and expenses, and publication  
 4 expenses, all of which shall be deemed administrative expenses of this action. With  
 5 respect to these aforementioned items of damages, costs and administrative expenses,  
 6 and should Capital Bank seek to pursue sale of the Vessel and credit bid, the Court  
 7 directs Capital Bank to prove up the amount of such damages, costs and administrative  
 8 expenses and/or seek sale of the Vessel and credit bid by way of regularly noticed  
 9 motion(s).

10       9. Plaintiff Capital Bank is further entitled to interest on the sum of judgment  
 11 entered herein, and any amended judgment, from the date of entry of judgment until paid  
 12 as provided by 28 U.S.C. § 1961.

13       10. Should Capital Bank seek sale of the Vessel, unless there are no proceeds  
 14 from the sale such as in the case of Capital Bank being the successful bidder with the  
 15 sale price not exceeding the amount of Capital Bank's credit bid, the proceeds of the sale  
 16 shall be deposited by the Marshal into the registry of the Court, after deduction of the  
 17 Marshal's commission in accordance with 28 U.S.C. §1921(c)(1), and shall be promptly  
 18 deposited into an interest bearing account, pending further order of this Court  
 19 authorizing distribution. Upon deposit of the proceeds into the registry of the Court, the  
 20 parties may apply via *Ex Parte* Application to satisfy their liens as established by this  
 21 judgment based on the following priorities:<sup>1</sup>

22           (a) First priority is Capital Bank's lien for *custodia legis* expenses in an

24       <sup>1</sup> The priority of claims is established by 46 U.S.C. § 31326(b)(1) (providing that a lien  
 25 for *custodia legis* expenses takes priority over all other claims); see also *Hibernia Nat'l  
 26 Bank v. M/V NIC*, 2005 U.S. Dist. LEXIS 9197, \*19 (E.D. La. 2005) (holding that  
 27 expenses of justice during *custodia legis* take first priority over all other liens); *Fortis  
 28 Bank (Nederland) N.V. v. M/V Shamrock*, 379 F.Supp.2d 2, 7 (D.C. Me. 2005) (same).  
 See also *General Electric Credit Corp. v. O/S Triton*, 712 F.2d 991, 994 (5<sup>th</sup> Cir. 1983)  
 (holding that where the mortgage provides it is security for all debts under the note,  
 attorney's fees and costs are secured and have the same priority as the underlying  
 obligation); *European-American Banking Corp. v. M/S Rosaria*, 486 F.Supp. 245, 258  
 (S.D. Miss. 1979) (same).

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1 amount to be proven up by way of regularly noticed motion as indicated in ¶ 8 of this  
2 judgment.

3 (b) Second priority is Capital Bank's lien for \$5,780,912.40 with respect  
4 to the principal amount of its preferred mortgage less the payments by Juanita Group.  
5 This amount shall also include the amount for interest on the principal and/or late  
6 charges to be proven up by way of regularly noticed motion as indicated in ¶ 8 of this  
7 judgment.

8 (c) Third priority is Capital Bank's lien for costs, attorney's fees, and/or  
9 administrative expenses, to be proven up by way of regularly noticed motion as indicated  
10 in ¶ 8 of this judgment.

11 (d) In the event that any proceeds remain after Capital Bank satisfies the  
12 amount of its lien pursuant ¶¶ 10(a) through (c) of this judgment, then fourth priority is  
13 Cover Drive's lien for its mortgage, in an amount as determined by the Court, in the  
14 event that Cover Drive properly applies to the Court and proves up its claim by way of  
15 regularly noticed motion.

16 (e) In the event that any proceeds remain after Capital Bank satisfies the  
17 amount of its lien and either (1) Cover Drive establishes a claim and satisfies the amount  
18 of its lien from the remaining proceeds, or (2) the Court adjudicates that Cover Drive's  
19 claim is not valid; then upon application to the Court by way of regularly noticed  
20 motion, Juanita Group may request disbursement of all remaining proceeds.

21 The Clerk shall immediately enter this Final Judgment.

22 IT IS SO ORDERED.

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DATED: 8/6/10

  
UNITED STATES DISTRICT COURT JUDGE